IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9436 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FAKIRMAMAD ALIAS KALUBHAI CHANDBHAI SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this petition under Article 226 of the Constitution of India, challneged the legality and validity of the order of detention dated 19.5.2000 passed by respondent no. 2 in respect of petitioner-detenu in exercise of his powers

conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of the grounds of detention, the petitioner-detenu is a 'bootlegger' within the meaning of sec. 2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing the order of detention, to arrive at a subjective satisfaction, the detaining authority has placed reliance on 5 prohibition cases, which are referred to in grounds of detention and which have been lodged in Rajkot City A-Division Police Station. He has not placed reliance on any statments of unnamed witnesses and passed an order of detention on 19.5.2000, which is challenged in this writ petition.

3. Though rule has been served upon each of the respondents, but they have not filed affidavits-in-reply, in reply to main writ petition controverting the grounds of attack mentioned in the memo of petition.

4. Ms Subhadraben Patel learned advocate for the petitioner has argued that looking to para-5 of grounds of detention, the detaining authority has considered the possiblity of passing an order under sec. 57(c) of the Bombay Police Act. She has argued that the detaining authority has not applied his mind because in view of the decision of Jayanti Nenumel Ramnani vs. Commissioner of Police, Rajkot & Ors., reported in 2000(2) GLH 166, the question does not arise for consideration for less drastic alternative remedy beause in this case petitioner has not been convicted at least for three cases. Therefore, what he ought not to have considered has been considered by him and, therefore, he has not applied his mind and, therefore, the order of detention is vitiated for want of subjective satisfaction.

5. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 19.5.2000 passed by respondent no. 2 in respect of detenu is quashed and set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)
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